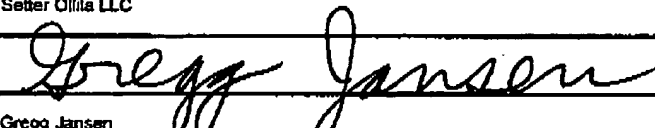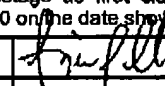PTO/SB/21 (09-04)
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Application Number	09/489,864
Confirmation Number	6357
Filing Date	1/24/00
First Named Inventor	Allan L. Samson
Art Unit	2134
Examiner Name	Michael J. Simitoski

Total Number of Pages in This Submission	6	Attorney Docket Number	35010/097

ENCLOSURES *(check all that apply)*

- [ ] Fee Transmittal Form
  - [ ] Fee Attached
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  - [ ] Affidavits/declaration(s)
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- [ ] Certified Copy of Priority Document(s)
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- [ ] Drawing(s)
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- [ ] After Allowance Communication to TC
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm	Setter Ollila LLC		
Signature	*Gregg Jansen*		
Printed Name	Gregg Jansen		
Date	8/3/05	Reg. No.	48,799

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PATENT APPLICATION

ATTORNEY DOCKET NO. 35010/097

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Allan L. Samson et al.

Application No.: 09/489,864   **Group No.:** 2134

Filed: 01/24/2000   **Examiner:** Simitoski, Michael J.

For: SYSTEM FOR PREVENTING TAMPERING WITH SIGNAL CONDITIONER REMOTE FROM A HOST SYSTEM

MAIL STOP APPEAL BRIEF - PATENTS
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REPLY TO EXAMINER'S ANSWER

Applicants filed a Notice of Appeal on September 7, 2004. An appeal brief was subsequently filed by Applicants on November 1, 2004. An Examiner's Answer was then received, with a mailing date of July 14, 2005. Applicants herein submit a reply brief to the Examiner's Answer under 37 CFR 41.41.

The Examiner maintains the 35 U.S.C 112, first paragraph rejection of independent claims 1, 12, 23, and 34 as failing to comply with the written description requirement. The Examiner asserts that the limitation that "the host signals a tamper condition in the signal conditioning circuitry" was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In response, Applicants point to the language of the cited statute, which states that the written description of the invention shall use such full clear, concise, and exact terms "as to enable any person skilled in the art" to make and use the invention. In the present

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application, the written description discloses that the host system requests authentication data from the signal conditioning circuitry, compares received authentication information to initial information stored in the host system, and the host system generates an error signal, wherein the invention is a system for preventing tampering with signal conditioning circuitry, as described at page 3, lines 21-32 in the written description. In addition, the description teaches that the "tamper proof system in accordance with this invention stores a record of authentication data transmitted to the host system 100 from the signal conditioner 110 to ensure that someone does not tamper with signal conditioner 110" (see page 7, lines 26-29). The written description further discloses that the processing unit 102 (of the host system) may "generate a signal indicating possible tampering . . ." (see page 8, lines 20-21). A person skilled in the art would understand that the above description comprises the host system signaling a tampering condition. The Examiner is reading the word "in" to imply that the signal is in the signal conditioning circuitry. This is incorrect. The word "in" denotes that the tamper condition is in the signal conditioning circuitry.

It is curious that the Examiner's Answer makes the argument at one point that the tampering signal is in the signal conditioning circuitry, and then turns around and draws the obvious conclusion that "'signal a tampering condition in the signal conditioning circuitry' is understood to be equivalent to 'signal a tampering condition, indicative of a tampering condition existing in the signal conditioning circuitry'". It is unclear why this reasoning only extends to the 35 U.S.C. § 112, second paragraph rejection and not to the 35 U.S.C. § 112, first paragraph rejection.

The Examiner's Answer maintains the rejection of independent claim 1 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,388,690 (Lumsden). The Examiner's Answer incorrectly asserts three erroneous points.

First, the Examiner's Answer asserts that Lumsden includes an "authentication information/word set", and cites col. 8, line 54 through col. 9, line 6 of Lumsden in support of this assertion. This is incorrect and the Examiner's Answer completely mis-characterizes the "data word set" of Lumsden (Lumsden's terminology). Lumsden does disclose a transponder identifier embedded in the data word set, along with a customer

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identification code (see col. 8, lines 54-60). In addition, the data word set includes three data words that include an instruction code and control bits, data to be sent to the transponder, and a block parity word (see col. 6, line 49 to col. 7, line 37). The transponder identifier is used by the particular transponder to determine whether to accept an instruction word set from the central computer (see col. 2, lines 48-53 and col. 6, lines 56-67). In addition, the central computer can use the transponder identifier to determine which transponder a message is received from. Therefore, Lumsden uses the transponder identifier only as an address for sending and receiving communications. In addition, Lumsden appears to compare data received from the transponder to some manner of stored power consumption threshold (see col. 4, lines 25-40). Use of a communication address or a comparison of received measured power consumption parameters in the central computer of Lumsden would NOT identify possible tampering.

The present application discloses that the authentication data can be a unique identification, calibration data, or other forms of data that does not change over time (see page 8, lines 2-4).

Second, the Examiner's Answer asserts that Lumsden compares an "authentication information/word set" with initial information comprising a transponder identification code, a customer identification code, and a predetermined quota, and cites col. 8, lines 54-65 and col. 4, lines 35-40 in support of this assertion. Applicants have reviewed the cited lines, and find no description or suggestion that the central computer compares the transponder identifier or customer identifier to any manner of "initial" information. In addition, Applicants find no description or suggestion that Lumsden detects a change between the transponder identifier and an initial information. Furthermore, Lumsden does not disclose making a tampering determination based on the transponder identifier or the customer identifier.

Third, the Examiner's Answer asserts that Lumsden signals a "tampering condition/load shed" in the signal conditioning circuitry/transponder in response to an authentication information/word set not being equal to an initial information, and cites col. 4, lines 35-40 in support of this assertion. This is incorrect in several ways. The "initial information" asserted by the Examiner's Answer merely comprises a power usage threshold. There is no indication in Lumsden that the threshold is "initial" in any way,

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and the threshold could likely be changed at any time by an associated power company. Lumsden does not signal a tampering condition. As previously asserted by Applicants, Lumsden does not anywhere use the word "tamper" or allude to any tampering detection. The assertion in the Examiner's Answer that Lumsden includes signaling a tampering condition is completely without merit and is incorrect. Furthermore, the Examiner's Answer asserts that Lumsden signals a tampering condition in response to an authentication information/word set not being equal to an initial information. This is also incorrect. Lumsden signals a load shed operation if power consumption exceeds a threshold (see col. 4, lines 34-40).

The Examiner's Answer maintains the rejection of independent claim 12 under 35 U.S.C. § 103(a) as being obvious over Lumsden in view of U.S. Patent No. 6,526,839 (Barger et al.) and further in view of U.S. Patent No. 3,355,944 (Sipin). The Examiner's Answer incorrectly asserts that Lumsden includes an "authentication information/word set", as refuted above. The Examiner's Answer incorrectly asserts that Lumsden compares "authentication information/word set" with "initial information", as refuted above.

The Examiner's Answer incorrectly asserts that Lumsden signals a "tampering condition/load shed" in the signal conditioning circuitry/transponder in response to an "authentication information/word set" not being equal to the "initial information", as refuted above.

In the Response to Arguments section, the Examiner's Answer asserts that "To perform the comparison operation is to detect tampering . . . regardless of the nature of the act of tampering or the nature of the third party that performs the tampering." This assertion is illogical on its face. The illogic of the assertion can be disproved by application of this reasoning to the transponder identifier. As a result, the Examiner's Answer is arguing that the comparison by the transponder of a received transponder identifier within a communication message to it's own address is a detection of tampering. It is not a detection of tampering. Furthermore, comparing power consumption information to some manner of threshold in order to perform load

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shedding operations is also not detecting of tampering. Customers are ALLOWED and EXPECTED to consume power beyond the threshold on occasion. The goal of Lumsden is to be able to reduce power consumption by turning off appliances or loads that consume high levels of electrical power. Consumers are not tampering with the transponder. Consumers are not tampering by using electrical power beyond the threshold.

In view of the above, Applicants respectfully request that the examiner's rejection of claims 1-44 be reversed.

Respectfully submitted,

Date: 8/3/05

SIGNATURE OF PRACTITIONER

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